

### REMARKS

Claims 1-50 were originally filed in this application. In response to a Restriction Requirement dated October 3, 2001, Applicants elected Group II claims drawn to methods of producing virus, corresponding to claims 19-21 and 27-33. Claims 22-26 were amended to correctly read as method claims of Group II in the Response filed on January 23, 2002. Claims 51-55 were added in the Amendment and Response, mailed January 3, 2002, to the Restriction Requirement dated October 3, 2001. Claims 51-55 were initially withdrawn from consideration for being drawn to a non-elected invention, but were rejoined in the petition decision dated May 28, 2003. Claim 56 was added in the response mailed June 26, 2002. Claims 1-18, 22-26, and 34-50 are canceled herein. Claims 19-21, 27-33 and 51-56 are currently pending.

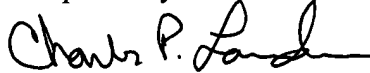
The Office action dated January 28, 2005 states that claims 1-17, 19-46, 48, 49 and 51-56 of the pending application may potentially interfere with the claims 1-24 of U.S. Patent 6,627,437 ('437 patent) under 35 U.S.C. §135(a). The Office action has recognized that the '437 patent is not available as a 102(e) reference against the current pending application (citing *In re Hilmer*, 359 F.2d 859, 149 USPQ 480 (CCPA 1966)). Applicants respectfully traverse this action in regard to the 35 U.S.C. §135(a) interference claim because there is no interference in fact between the current pending claims and the issued claims of the '437 patent.

As defined in C.F.R. §1.601(i), "An interference is a proceeding instituted in the Patent and Trademark Office before the Board to determine any question of patentability and priority of invention between two or more parties *claiming the same patentable invention*." (emphasis added) In addition, C.F.R. §1.601(j) states "An interference-in-fact exists when at least one *claim* of a party that is designated to correspond to a count and at least one *claim* of an opponent that is designated to correspond to the count *define the same patentable invention*." (emphasis

added) The pending claims of the present application and the issued claims of the '437 patent are distinct and not drawn to the same patentable invention. Applicants submit that any potential interfering subject matter was subject to a restriction requirement in the action mailed October 3, 2001. Applicants subsequently elected the claims of Group II drawn to methods of producing virus. Applicants did not elect the claims of Group I, which were characterized by the Restriction Requirement as drawn to polynucleotides and constructs. Those claims have been canceled. Claims 1-24 of the '437 patent are directed to "isolated polynucleotides," "vectors," and "host cells." According to the Restriction Requirement in the current case, these claims are separately patentable from the elected claims of Group II pending in the present application. Thus, the present application does not contain claims defining the same invention claimed in the '437 patent.

The present amendment is filed in response to the Office action mailed January 28, 2005. Claims 19-21, 27-33 and 51-56 are currently pending. They are directed to patentably distinct subject matter and are in condition for allowance. Applicant respectfully request allowance of the pending claims. The Examiner is invited to contact the undersigned agent at 713-651-5391 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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